No. 336

In the Supreme Court of the United States

OCTOBER TERM, 1952

PLUMBERS, STEAMFITTERS, REFRIGERATION PIPEFITTERS, AND APPRENTICES OF LOCAL NO. 298, A.F. OF L., AND BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREEN BAY, WISCONSIN, AND VICINITY, PETITIONERS

v.

COUNTY OF DOOR, A MUNICIPAL CORPORATION AND ARNOLD G. ZAHN AND THEODORE QUERENHOVEN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE

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No. 396

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OPINIONS BELOW

The findings of fact, conclusions of law, and memorandum opinion of the Circuit Court for Door County (R. 1–3, 6–9) are unreported. The opinion of the Wisconsin Supreme Court (R. 26–38) is reported at 89 N.W. 2d 920.

JURISDICTION

The petition for a writ of certiorari was granted on November 10, 1958. The jurisdiction of this Court rests on 28 U.S.C. 1257 (3).

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U.S.C., Sec. 151, *et seq.*, are as follows:

Definitions

Sec. 2. When used in this Act—

(1) The term "person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

Unfair Labor Practices

Sec. 8. (b) It shall be an unfair labor practice for an organization or its agents—

* * * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to

perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; * * *.

QUESTION PRESENTED

This brief discusses only a single question raised by petitioners, namely, whether a political subdivision, such as a county, is a "person" within the meaning of Section 8(b)(4)(A) of the National Labor Relations Act, as amended.

STATEMENT

The facts which give rise to the instant case, apparently undisputed, are as follows: On March 1, 1957, respondent County of Door, Wisconsin, a municipal corporation, entered into a general contract with respondent Oudenhoven for the construction of an addition to the County's court house at Sturgeon Bay, Wisconsin (R. 6–7, 17). Eight other contracts were also let by the County for various phases of the construction, including one for the plumbing work to respondent Zahn (R. 7, 18). The total cost of the court house addition was $450,000. Of this amount, approximately $225,000 represented the cost of materials manufactured outside the State of Wisconsin (R. 22).

All of the contractors on the job, except respondent Zahn, were unionized (R. 27). Petitioner Plumbers Union had sought to persuade Zahn to unionize his

operations and warned that otherwise there might be some difficulty on the construction project (R. 27). Zahn had refused to accede to this demand. Shortly after construction commenced on the court house addition, petitioners, from June 26 to July 5, 1957, and from July 15 to July 25, placed a picket on the sidewalk near the project. He carried a placard which stated in substance that non-union men were employed on the job. The placard also contained the designation "Plumbers Local 298, A.F. of L., CIO" (R. 7–8, 16, 19, 20). The picketing was conducted peacefully but, as anticipated by the Union, employees of the union contractors working on the project refused to cross the picket line (R. 7–8, 16, 19, 24).

The District Attorney of the County filed a joint complaint (on behalf of the County, Zahn and Oudenhoven) in the Circuit Court of Door County, alleging that the picketing violated Section 103.535 of the Wisconsin Statutes[1] and praying for an injunction (R. 3–4). Petitioners in their answer alleged, *inter alia*, that, under the National Labor Relations Act, as amended, exclusive jurisdiction over the controversy was vested in the National Labor Relations Board (R. 5–6).

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[1] Wis. Stats., Sec. 103.535 (1955) provides:

> It shall be unlawful for anyone to picket, or induce others to picket, the establishment, employees, supply or delivery vehicles, or customers of anyone engaged in business, or to interfere with his business, or interfere with any person or persons desiring to transact or transacting business with him when no labor dispute, as defined in subsection (3) of section 103.62, exists between such employer and his employees or their representatives.

The trial court rejected this defense and found that the picketing not only was unlawful as alleged in the complaint but, in addition, violated Sec. 111.06 (2)(b) of the Wisconsin Statutes in that it sought to compel Zahn to interfere with his employees' rights of self-organization (R. 8). A temporary restraining order issued on July 27, 1957 (R. 9), and a permanent injunction on October 23, 1957, restraining petitioners from picketing the construction project (R. 10).

On appeal, the Supreme Court of Wisconsin, with one member dissenting, affirmed the trial court's judgment (R. 25). With respect to petitioners' contention that exclusive jurisdiction over the controversy was vested in the Labor Board, the court held that a political subdivision of a state is neither an "employer" nor a "person" within the purview of the federal Act and hence the National Labor Relations Board lacked jurisdiction over the controversy (R. 30–34). In reaching this result the court expressly noted its disagreement with the view of the Board and the United States Court of Appeals for the Third Circuit (*National Labor Relations Board* v. *Electrical Workers Local 313*, 254 F. 2d 221, enforcing 117 NLRB 437), that a county is a "person" within the meaning of Section 8(b)(4)(A) of the Act and entitled to its protection (R. 31–32).

SUMMARY OF ARGUMENT

Section 8(b)(4)(A) of the National Labor Relations Act, as amended, makes it unlawful for a union to induce the employees of any employer to engage in

work stoppages with an object of forcing or requiring "any employer or other person * * * to cease doing business with any other person." Section 2(2) of the Act which defines the term "person" to include various entities does not specifically enumerate governmental instrumentalities or entities as included within the definition. Although the Board at one time held that such instrumentalities were not persons within the meaning of the Act, this Court's decision in *Teamsters Union* v. *New York, New Haven & Hartford Railroad Co.*, 350 U.S. 155, invalidated the basis of the Board's ruling. There, the Court held that a railroad, although not specifically enumerated in the statutory definition of the term "person", nevertheless was a person within the meaning and protection of Section 8(b)(4)(A). By a parity of reasoning, the Board has correctly concluded that a governmental instrumentality is likewise included within the term "person" in the statute.

The term "person", as used in a federal statute, ordinarily includes a State and its political subdivisions. This is certainly the case when the purpose, subject matter and scope of the enactment argue for full coverage.

The purpose and subject matter of Section 8(b)(4)(A) cogently suggest that a governmental instrumentality or entity, although not specifically enumerated in the statutory definition of the term "person", should not be excluded from the protection which the statute affords against the disruption of business relations through secondary strike pressures. The public interest in the unobstructed flow of com-

merce is harmed whether such secondary strike pressure hits a private person or a governmental agency. And it is unrealistic to suppose that Congress meant to deprive a governmental body of the protection which the statute broadly provides. Moreover, it is unreasonable to suppose that Congress meant to deny neutral secondary employers doing business with such governmental instrumentalities (such as the union contractors here) the protection and benefits of the Act merely because they happened to be doing business with a governmental body instead of a private person or corporation. To countenance such a result would bring about the very mischief Congress sought to prohibit.

ARGUMENT

A political subdivision, such as respondent county, is a "person" within the meaning of the National Labor Relations Act, as amended

The decision below rests principally upon the subsidiary conclusion that the term "person" in Section 8(b)(4)(A) of the National Labor Relations Act, as amended, does not include a political entity or subdivision, such as a county. This construction of the statute is contrary to the Board's position. Because of the importance of the issue in the administration of the Act, the Board deems it appropriate to submit its views to the Court.

As stated above, petitioner Union picketed the construction project because of the presence of Zahn's non-union employees. As the Union anticipated, this resulted in the refusal of the union employees of the other contractors to continue working. The picketing may thus be viewed as calculated to induce the em-

ployees of the union contractors to engage in a work stoppage, either (a) to force or require those contractors to cease doing business with the County so long as Zahn remained on the job, or (b) to force or require the County to terminate its contract with Zahn unless he acceded to the Union's demand to unionize his operations.

Section 8(b)(4)(A) makes it unlawful for a union to induce the employees "of any employer" to engage in a work stoppage with an object of forcing or requiring "any employer or other person * * * to cease doing business with any other person." Adapting this language to the situation here, it would appear that the Union induced the work stoppage either to force an employer, *i.e.*, the union contractors, to cease doing business with an "employer or other person," *i.e.*, the County, or to force an "employer or other person," *i.e.*, the County, to cease doing business with another person, *i.e.*, Zahn. The critical issue is, of course, whether a county is an "employer" *or* a "person" within the scope of the statutory language.

The Board, in its administration of the amended Act, has been confronted with the problem of applying the language of Section 8(b)(4)(A) to situations where political subdivisions or governmental instrumentalities are involved. The Board's present view is that such political subdivisions and other governmental instrumentalities, although they are not "employers" under the Act, are "persons" within its purview, and hence are entitled to its protection against secondary strike pressures designed to disrupt busi-

ness relations between them and other employers or persons.

The problem arises in either of two situations: (1) where a union seeks to induce the employees of a governmental instrumentality to engage in secondary work stoppages for the purpose of forcing that instrumentality to cease doing business with a disfavored private employer; or (2) where, as in the instant case, the union seeks to induce the employees of a secondary private employer in order to bring about a cessation of business between that employer and the governmental instrumentality (because the latter is doing business with a disfavored private employer), or to disrupt relations between the governmental instrumentality and some other private employer.

Section 2(2) of the Act, which defines the term "employer", specifically excludes "any State or political subdivision thereof." Because of this explicit language, the Board has uniformly held that political subdivisions or governmental instrumentalities are not "employers" within the meaning of Section 8(b)(4)(A). Accordingly, insofar as the prohibition of Section 8(b)(4)(A) is directed to inducement or encouragement of "employees of any employer" for the purpose of forcing "any employer" to cease doing business with any other person, the Board has uniformly held that political subdivisions or governmental instrumentalities are not employers within

the reach of that Section.[2] *Al J. Schneider*, 87 NLRB 99, 89 NLRB 221; *Sprys Electric Co.*, 104 NLRB 1128; *Paper Makers Importing Co., Inc.*, 116 NLRB 267.

A different issue is presented, however, where, as here, the union does not seek to induce the employees of a political subdivision to engage in secondary work stoppages but seeks, through inducement of employees of a secondary statutory employer, to bring about a cessation of business between the political subdivision and others. In that context, since the governmental entity is not, in the view of a majority of the Board, an "employer," the question presented is whether the political subdivision is a "person" within the meaning of Section 8(b)(4)(A). If it is, it is entitled to the protection of the statute against secondary strike pressures having as an object forcing or requiring "any employer *or other person* * * * to cease doing business *with any other person.*" (Emphasis supplied.) As the quoted language shows, the "object" language of Section 8(b)(4)(A), unlike the "means" language of the introductory paragraph of that Section, is not restricted to employers; it also includes "persons."

Section 2(1) of the Act which defines persons makes no reference to political entities, providing merely—

> The term "person" includes one or more individuals, labor organizations, partnerships, asso-

[2] The Board still adheres to this view. Board Member Rodgers, however, has taken the view that political subdivisions are "employers" as well as "persons" within the meaning of Section 8(b)(4)(A). *Paper Makers* case, *supra.*

ciations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

Despite the broad and inclusive language of this definition,[3] the Board was initially of the view that political subdivisions could not be considered as "persons" for the purpose of Section 8(b)(4)(A). The basic premises for the Board's position in this regard were (1) that the omission of any reference to political subdivisions in Section 2(1) of the Act reflected a congressional intent to exclude them from the term "person"; and (2) that Congress had legislated a scheme of correlative rights and duties attaching to employers, employees, and labor organizations from which political subdivisions were intentionally excluded as employers, and that this scheme would be shifted if a political subdivision could invoke the protection of Section 8(b)(4)(A) as a "person" while remaining immune (on the ground that it is not an "employer") from charges filed against it by others. The Board's early decisions also adverted to the fact that an effort to amend the Wagner Act in 1938 to include political subdivisions in the definition of "persons" was defeated in committee (S. 3390, 83 Cong. Rec. 1488–1489). See *Schneider* and *Sprys* cases, *supra*.

This was the state of Board decisions when this Court decided *Teamsters Union* v. *New York, New*

[3] "In definitive provisions of statutes and other writings, 'include' is frequently, if not generally, used as a word of extension or enlargement rather than one of limitation or enumeration. *American Surety Co.* v. *Marotta*, 287 U.S. 513, 517.
Accord: *Federal Land Bank Co.* v. *Bismarck Co.*, 314 U.S. 95, 99–100; *Gray* v. *Powell*, 314 U.S. 402, 416; *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U.S. 177, 189.

Haven & Hartford Railroad Co., 350 U.S. 155. In that case, the railroad was in a position analogous to that of the County in the instant case. The union had induced employees of a transportation firm, which was a statutory employer, to cease delivering trailers to the railroad's flatcars with an object of forcing this firm to cease doing business with the railroad. When the railroad went into a state court to obtain injunctive relief against the union's conduct, the state tribunal granted the injunction[4] on the ground, *inter alia*, that the railroad would have no standing to invoke the Board's processes, citing, among other authorities, the Board's *Schneider* and *Sprys* decisions, *supra*. This Court, however, ruled that the Board and not the state court had jurisdiction over the controversy, stating (350 U.S. at 160):

> We think it clear that Congress, in excluding "any person subject to the Railway Labor Act" from the statutory definition of "employer," carved out of the Labor Management Relations Act the railroad's employer-employee relationships which were, and are, governed by the Railway Labor Act. But we do not think that by doing so, Congress intended to divest the N.L.R.B. of jurisdiction over the controversies otherwise within its competence solely because a railroad is the complaining party. Furthermore, *since railroads are not excluded from the Act's definition of "person," they are entitled to Board protection from the kind of unfair labor practice proscribed by § 8 (b) (4) (A).* [Emphasis supplied.]

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[4] *New York, New Haven & Hartford Railroad Co.* v. *Jenkins*, 331 Mass. 720, 122 N.E. 2d 759.

The *Teamsters Union* decision prompted the Board, in the *Peter D. Furness* case, 117 NLRB 437, to reconsider its interpretation of the statutory term "person" as applied to political subdivisions. There, as in the instant case, a county awarded a contract to a non-union contractor (Furness) to perform certain work at an installation owned and operated by the county. The union objected to Furness' doing the work, because he was non-union, and picketed the work site. As a result of the picketing, the union employees of other contractors on the job, Haddock and Bateson, quit working. The Board found, as alleged in the complaint, that the union had violated Section 8(b)(4)(A) of the Act by inducing the employees of Haddock and Bateson to engage in work stoppages with an object of forcing or requiring Haddock and Bateson to cease doing business with the county and forcing or requiring the county to cease doing business with Furness. The issue presented was whether the county was a "person" within the meaning of section 8(b)(4)(A).

As the Board reads it, this Court's decision in *Teamsters Union, supra,* invalidated the basic premises underlying the Board's prior holding that political subdivisions were not "persons" within the meaning of the Act. Thus, the Court's determination that "railroads are not excluded from the Act's definition of 'person'", albeit there is no reference to railroads in Section 2(1), weakened one prop of the *Schneider* and *Sprys* cases. Moreover, the decision of this Court, in holding that railroads are "persons" who may file charges for redress under

Section 8(b)(4)(A), while at the same time noting that the Act does not contemplate regulation of a railroad's employer-employee relationships, rendered untenable, in the Board's view, the "correlative rights and duties" construction which the agency had adopted in *Schneider* and *Sprys*. Finally, in its reconsideration of the problem, the Board concluded that the defeat in committee of the 1938 proposal to amend the Wagner Act by including political subdivisions in the definition of the term "person" was not of sufficient weight to override the conclusion that political subdivisions are entitled, as "persons", to the protection of Section 8(b)(4)(A). In sum, then, as the Board stated, 117 NLRB at p. 441, "Our reading of the Supreme Court's [*Teamsters Union*] decision convinces us that the *Schneider* and *Sprys* cases, insofar as they hold that political subdivisions are not 'persons' under Section 8(b)(4)(A) of the Act, should no longer be controlling and to that extent must be overruled."[8] Accord: *National Labor Relations Board* v. *Electrical Workers Local 313*, 254 F. 2d 221 (C.A. 3), enforcing the *Furness* case; see, also, *National Labor Relations Board* v. *Spring-*

[8] The Board has also applied the *Furness* rule to instrumentalities and agencies of the federal government. *Freeman Construction Co.*, 120 NLRB No. 106 (Department of the Army); *New Mexico Building Branch, Associated General Contractors*, 120 NLRB No. 58 (Atomic Energy Commission and U.S. Corps of Engineers).

field Building and Construction Trades Council (C.A. 1), decided December 31, 1958.[6]

The opinion below (R. 32-33) states that under established canons of statutory construction the term "person" is not to be read to include political or governmental entities in the absence of an express recital to that effect. We take issue with this on two grounds.

In the first place, we believe that there is a presumption, where a *federal* statute of general application is in question, that it embraces States, state agencies and state officers and employees. Thus it has been held that a State is a "person" within the meaning of the Sherman Act (*Georgia* v. *Evans*, 316 U.S. 159); that a State is a "person" within the meaning of a federal statute levying a tax upon persons en-

[6] It is of note that on the basis of this Court's decision in the *Teamsters Union* case the Board also concluded that railroads are "persons" within the meaning of Section 8(b)(4)(A). However, the Board, with Members Rodgers and Jenkins dissenting, has adhered to its ruling that railroads, like political subdivisions (see note *supra*, p. 10), are not employers within the meaning of Section 8(b)(4)(A). *International Rice Milling Co.*, 84 NLRB 360; *Superior Derrick Corp.*, 122 NLRB No. 6. Member Jenkins has taken the position that "the sole effect of Section 2 of the Act was to 'carve out' of the regulatory ambit of the Act the railroad company's *own* conduct of its relationships to its own employees *and no more*" (*U & Me Transfer*, 119 NLRB No. 114). For that reason he believes that railroads, and presumably political subdivisions, are employers within the protection of Section 8(b)(4)(A).

The Fifth Circuit has taken the position that railroads are employers within the meaning of Section 8(b)(4)(A). *International Rice Milling Co.* v. *National Labor Relations Board*, 183 F. 2d 21, reversed on different ground, 341 U.S. 665; *W. T. Smith Lumber Co.* v. *National Labor Relations Board*, 246 F. 2d 129.

gaged in the sale of liquor (*Ohio* v. *Helvering*, 292 U.S. 360; *South Carolina* v. *United States*, 199 U.S. 437); and that a State is subject to a federal statute regulating common carriers by railroad (*United States* v. *California*, 297 U.S. 175). See, also, *New York* v. *United States*, 326 U.S. 572; *Wilmette Park District* v. *Campbell*, 338 U.S. 411; *Helvering* v. *Gerhardt*, 304 U.S. 405. Cf. *Metropolitan R'd* v. *District of Columbia*, 132 U.S. 1.

Secondly, we do not believe that the absence of an express recital in the federal statute would be conclusive even as to the application of that statute to the United States. It would still be open to the Court to determine the question in light of the purpose, subject matter and scope of the enactment. As this Court stated in *United States* v. *Cooper Corp.*, 312 U.S. 600, at 604–605:

> Since, in common usage, the term "person" does not include the sovereign, statutes employing the phrase are ordinarily construed to exclude it. But there is no hard and fast rule of exclusion. The purpose, the subject matter, the context, the legislative history, and the executive interpretation of the statute are aids to construction which may indicate an intent, by the use of the term, to bring a state or nation within the scope of the law.

And see *Far East Conf.* v. *United States*, 342 U.S. 570, 576.[1]

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[1] It has sometimes been stated that "statutes which in general terms divest pre-existing rights or privileges will not be applied to the sovereign without express words to that effect." *United States* v. *United Mine Workers*, 330 U.S. 258, 272–273; see,

The purpose and subject matter of Section 8(b)(4)(A) cogently suggest that governmental and political entities are embraced. The Board's conclusion that a political subdivision, such as the County here, is a "person", entitled to protection against secondary pressures is consistent with, if not compelled by, the purpose underlying Section 8(b)(4)(A). The Congressional objective, as this Court has stated, was to shield "unoffending employers and others from pressures in controversies not their own." *National Labor Relations Board* v. *Denver Building & Construction Trades Council*, 341 U.S. 675, 692. In Congress' view, such pressures, extending the area of industrial conflict to neutral employers and persons, were incompatible with the public interest in the free flow of commerce. *Local 1976, United Brotherhood of Carpenters and Joiners of America* v. *National Labor Relations Board*, 357 U.S. 93, 100; Sen. Rep. No. 105, 80th Cong., 1st Sess., p. 8, reprinted in *Legislative History of the Labor Management Relations Act*, 1947 (U.S. Gov't Print. Off., 1948), p. 414.

Clearly, the public interest in the unobstructed flow of commerce is harmed whether secondary strike

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also, *Nardone* v. *United States*, 302 U.S. 379, 383. But, even as so stated, the rule is obviously inapplicable to Section 8(b)(4)(A) for that Section does not, of course, divest any governmental agency of any preexisting rights or privileges. Indeed, to construe the term person as excluding governmental agencies would deprive them of remedies which the statute affords to private employers and persons. In these circumstances "a general statute which is beneficial to the sovereign will be liberally interpreted to secure for it the same rights, privileges and protection granted to individuals." *Sutherland on Statutory Construction* (3d ed., Horack, Vol. 3, Sec. 6302).

activity hits a private party or a governmental agency. Indeed, the injury to the public is particularly apparent when such activities are directed against a governmental entity.

All of the considerations which moved Congress to protect private employers and persons from secondary labor boycotts apply to governmental agencies or instrumentalities. Unquestionably, such instrumentalities are likely to be injured by the prohibited practices. It is difficult to believe that Congress meant to deprive a governmental body, not itself involved in any labor dispute, of the protection which the statute generally affords to those adversely affected by secondary pressures. "Reason balks against implying denial of such a remedy * * *." *Georgia* v. *Evans*, 316 U.S. 159, 162. So incongruous a purpose should not be attributed to Congress unless there are "evident affirmative grounds for believing that Congress intended to withhold an otherwise available remedy" from governmental agencies. *United Mine Workers, supra,* 330 U.S. at p. 270. No such showing can be made. On the contrary, the underlying legislative purpose reflected in Section 8(b)(4)(A) removes any basis for excluding governmental agencies from the reach of the term "person." *National Labor Relations Board* v. *Electrical Workers Local 313*, 254 F. 2d 221 (C. A. 3).

Moreover, it is highly unreasonable to suppose that Congress meant to deny to neutral employers doing business with governmental bodies the protection and benefits which they would have in doing business with private persons or corporations. To countenance

such a result would invite the very mischief Congress sought to bar. As this Court has stated, Congress, in Section 8(b)(4)(A), "aimed to restrict the area of industrial conflict insofar as this could be achieved by prohibiting the most obvious, widespread, and, as Congress evidently judged, dangerous practice of unions to widen that conflict: the coercion of neutral employers, themselves not concerned with a primary labor dispute, through the inducement of their employees to engage in strikes or concerted refusals to handle goods." *Carpenters Local 1976, supra,* 357 U.S. at p. 100. To deprive secondary employers of the protection which the statute thus gives them, merely because they are doing business with a governmental entity, would tend to defeat the basic statutory purpose. The anomalous result would be to permit labor organizations to engage in the practices denounced by Section 8(b)(4)(A) whenever the work is being performed under government contract.[8]

[8] The practical significance of such an exemption—which also serves to rebut it—is underscored by the fact that construction contracts (to say nothing of other public contracts) entered into by federal, state, and local governments during the first eight months of 1958 involved expenditures in excess of 9 billion dollars. U.S. Dept. of Labor and U.S. Dept. of Commerce, *Construction Review* (Dec. 1958) Vol. 4, p. 2.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the ruling below that the County is not a "person" within the meaning of the National Labor Relations Act, as amended, is erroneous.

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